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Civil Rights

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II. Federal Constitutional Guarantees of Civil Rights

C. Fourteenth Amendment

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West's Key Number Digest

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II. Federal Constitutional Guarantees of Civil Rights

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§ 5. Civil rights guaranteed by Fourteenth Amendment, generally

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Section 1 of the Fourteenth Amendment is the source of many civil rights, and prohibits states from making or enforcing any law which will abridge the privileges or immunities of citizens of the United States; from depriving any person of life, liberty, or property, without due process of law; and from denying to any person within their jurisdiction the equal protection of the laws. There are thus three distinct provisions guaranteeing the rights of persons and property: (1) the Privileges and Immunities Clause, (2) the Due Process Clause, and (3) the Equal Protection Clause.¹ The Fourteenth Amendment was adopted to guarantee equality for blacks and, by extension, has come to include all minority groups.² The commands of the Amendment are addressed only to the state or to those acting under color of its authority, the central purpose of the Amendment being to eliminate racial discrimination emanating from official sources in the states.³

Embodied in the Fourteenth Amendment right to bodily integrity is the right to be free from unauthorized and unlawful physical abuse at the hands of the state by a state official acting or claiming to act under color of law, when the alleged conduct is of such a nature as to shock one's conscience.⁴ That is, the Amendment itself erects no shield against merely private conduct, however discriminatory or wrongful. Similarly, actions of the Federal Government and its officers are beyond the purview of the Amendment.⁵

Discriminatory intent need not be proven by direct evidence, but may often be inferred from the totality of the relevant facts, including the fact, if it is true, that a law bears more heavily on one race than another, which demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.⁶

Footnotes

- 1 [Snowden v. Hughes](#), 321 U.S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1944).
- 2 [Alevy v. Downstate Medical Center](#), 39 N.Y.2d 326, 384 N.Y.S.2d 82, 348 N.E.2d 537 (1976).
- 3 [Shaw v. Hunt](#), 517 U.S. 899, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (1996).
The "under color of law" requirement under [42 U.S.C.A. § 1983](#) is the same as the Fourteenth Amendment's "state action" requirement. [Chudacoff v. University Medical Center of Southern Nevada](#), 649 F.3d 1143 (9th Cir. 2011), for additional opinion, see, [437 Fed. Appx. 609](#), 273 Ed. Law Rep. 616 (9th Cir. 2011).
- 4 [U.S. v. Giordano](#), 260 F. Supp. 2d 477 (D. Conn. 2002).
- 5 [District of Columbia v. Carter](#), 409 U.S. 418, 93 S. Ct. 602, 34 L. Ed. 2d 613 (1973).
- 6 [Rogers v. Lodge](#), 458 U.S. 613, 102 S. Ct. 3272, 73 L. Ed. 2d 1012 (1982).

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II. Federal Constitutional Guarantees of Civil Rights

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§ 6. Civil rights guaranteed by Fourteenth Amendment Privileges and Immunities Clause

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The Privileges and Immunities Clause of the Fourteenth Amendment deals with the rights of citizens of the United States as such, and the privileges and immunities protected thereby are those of citizens of the United States, as distinguished from the privileges and immunities of the citizens of a state.¹ The clause protects all citizens against abridgment by states of rights of national citizenship as distinct from the fundamental or natural rights inherent in state citizenship.²

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Footnotes

¹ [Am. Jur. 2d, Constitutional Law § 812.](#)

² [Madden v. Commonwealth of Kentucky](#), 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 125 A.L.R. 1383 (1940).

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C. Fourteenth Amendment

§ 7. Civil rights guaranteed by Fourteenth Amendment Due Process Clause

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The Due Process Clause was intended, in addition to other guarantees of private rights, to give increased security against arbitrary deprivation of life or liberty, or the arbitrary spoliation of property.¹ The Due Process Clause requires that action by a state through any of its agencies must be consistent with the fundamentals of liberty and justice.²

The Due Process Clause does not prohibit action by a private individual, unless the state, in any of its manifestations, has in some way involved itself in the actions of an individual to some significant extent.³

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Footnotes

- ¹ [Missouri Pac. Ry. Co. v. Humes](#), 115 U.S. 512, 6 S. Ct. 110, 29 L. Ed. 463 (1885); [Newman v. Sathyavaglswaran](#), 287 F.3d 786 (9th Cir. 2002).
- ² [Buchalter v. People of State of New York](#), 319 U.S. 427, 63 S. Ct. 1129, 87 L. Ed. 1492 (1943).
- ³ [Palmer v. Columbia Gas of Ohio, Inc.](#), 479 F.2d 153, 72 Ohio Op. 2d 337 (6th Cir. 1973) (holding modified on other grounds by, [Turner v. Impala Motors](#), 503 F.2d 607, 15 U.C.C. Rep. Serv. 533 (6th Cir. 1974)).

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§ 8. Civil rights guaranteed by Fourteenth Amendment Equal Protection Clause

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West's Key Number Digest, [Civil Rights](#)  1003, 1004

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[Evaluation of Policies Mandating or Forbidding Race-Conscious "Affirmative Action" with Respect to Admissions, Financial Aid, Classification, or Tracking Standards for Students at Schools or Colleges After Grutter v. Bollinger and Gratz v. Bollinger](#), 4 A.L.R.7th Art. 6

[Construction and application of sec. 902 of Civil Rights Act of 1964 \(42 U.S.C.A. sec. 2000h-2\) authorizing United States to intervene in private action for relief from denial of equal protection of laws under Fourteenth Amendment on account of race, color, religion, sex, or national origin](#), 19 A.L.R. Fed. 623

The Equal Protection Clause of the Fourteenth Amendment furnishes a distinct right, separate from and independent of the rights protected by the Amendment's Privileges and Immunities Clause. It protects the right to the equal utilization, without discrimination on the basis of race, of public facilities owned, operated, or managed by or on behalf of a state or any subdivision thereof.¹ Rights under the Equal Protection Clause arise only where there has been involvement of the state or one acting under its authority.² The clause does not add anything to the rights which one citizen has under the Constitution against another.³

As the virtue of the right to equal protection of the laws could lie only in the breadth of its application, its constitutional assurance was reserved in terms whose imprecision was necessary if the right were to be enjoyed in the variety of individual-state relationships which the Amendment was designed to embrace.⁴ However, not every denial of a right conferred by state

law involves a denial of the equal protection of the laws within the meaning of the Fourteenth Amendment, even though the denial of the right to one person may operate to confer it on another.⁵

The element of intentional or purposeful discrimination is necessary to establish a denial of equal protection of the laws.⁶ This may be shown, inter alia, by extrinsic evidence establishing a discriminatory design to favor one individual or class over another.⁷ A discriminatory purpose will not be presumed, but must be clearly shown,⁸ and more is required to establish a state's violation of the Equal Protection Clause than a simple reference to the history of past de jure discrimination against blacks within the state.⁹

On timely application, the Attorney General of the United States may intervene in any action commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the Fourteenth Amendment on account of race, color, religion, sex, or national origin.¹⁰

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Footnotes

- 1 U.S. v. Guest, 383 U.S. 745, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966).
- 2 U.S. v. Guest, 383 U.S. 745, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966).
- 3 U.S. v. Guest, 383 U.S. 745, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966).
- 4 Burton v. Wilmington Parking Authority, 365 U.S. 715, 81 S. Ct. 856, 6 L. Ed. 2d 45 (1961).
- 5 Snowden v. Hughes, 321 U.S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1944).
- 6 Snowden v. Hughes, 321 U.S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1944).
In an action by black residents of a city to challenge the closing of the north end of a street which traversed a white residential community, to the north of which the blacks resided, any claim that the closing violated the Equal Protection Clause was foreclosed in the absence of proof of discriminatory intent. *City of Memphis v. Greene*, 451 U.S. 100, 101 S. Ct. 1584, 67 L. Ed. 2d 769 (1981).
To succeed on a 42 U.S.C.A. § 1983 claim against a public employer for an equal protection violation, a plaintiff must show that the employer made an adverse employment decision with a discriminatory intent and purpose. *Timm v. Wright State University*, 375 F.3d 418, 189 Ed. Law Rep. 546, 2004 FED App. 0212P (6th Cir. 2004).
- 7 Snowden v. Hughes, 321 U.S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1944).
- 8 Snowden v. Hughes, 321 U.S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1944).
- 9 *Rose v. Mitchell*, 443 U.S. 545, 99 S. Ct. 2993, 61 L. Ed. 2d 739 (1979).
- 10 42 U.S.C.A. § 2000h-2.

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II. Federal Constitutional Guarantees of Civil Rights

C. Fourteenth Amendment

§ 9. Enforcement of civil rights under Fourteenth Amendment through congressional legislation

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West's Key Number Digest, [Civil Rights](#)  1003, 1004

Although the Fourteenth Amendment is self-executing without any ancillary legislation,¹ Section 5 of the Amendment is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether legislation is needed, and, if so, what kind, to secure the guarantees of the Amendment.² It was included in the Amendment as a means of granting Congress, by specific provision applicable to the Fourteenth Amendment, the same broad powers as those expressed in the "necessary and proper" clause of [U.S. Const. Art. I, § 8, cl. 18](#).³

An exercise of congressional power under § 5 that prohibits the enforcement of a state law does not depend upon whether the state law is prohibited by the substantive provisions of the Amendment.⁴ However, Congress cannot use its power to enforce the Fourteenth Amendment to alter what that Amendment bars.⁵ The power of Congress is limited to adopting measures to enforce the Amendment's guarantees; no power is given Congress to restrict, abrogate, or dilute these guarantees,⁶ and the Supreme Court presumes that federal statutes do not impose obligations on the states pursuant to the Enforcement Clause of the Fourteenth Amendment.⁷

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Footnotes

- 1 [Civil Rights Cases](#), 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835 (1883).
- 2 [Katzenbach v. Morgan](#), 384 U.S. 641, 86 S. Ct. 1717, 16 L. Ed. 2d 828 (1966).
- 3 [Katzenbach v. Morgan](#), 384 U.S. 641, 86 S. Ct. 1717, 16 L. Ed. 2d 828 (1966).

- 4 Katzenbach v. Morgan, 384 U.S. 641, 86 S. Ct. 1717, 16 L. Ed. 2d 828 (1966).
5 Allen v. Cooper, 140 S. Ct. 994 (2020).
6 Katzenbach v. Morgan, 384 U.S. 641, 86 S. Ct. 1717, 16 L. Ed. 2d 828 (1966).
7 Bond v. U.S., 572 U.S. 844, 134 S. Ct. 2077, 189 L. Ed. 2d 1 (2014).

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C. Fourteenth Amendment

§ 10. State action violating civil rights under Fourteenth Amendment

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The Fourteenth Amendment only applies to actions taken by state actors, not by private entities.¹ State action within the inhibitions of the Fourteenth Amendment includes all state action infringing the rights secured thereby, whatever the state agency taking the action and whatever the guise in which it is taken.² State action includes action by a state legislature, state courts, or state executive or administrative officers,³ municipal ordinances,⁴ the actions in office of municipal officials,⁵ and the acts of a state's political subdivisions and administrative agencies.⁶

State participation in private activities may in some circumstances subject such activities to the restrictions of the Fourteenth Amendment.⁷ Such participation may be in the form of contribution of state funds to privately operated facilities,⁸ or may take the form of allowing private organizations to use public facilities.⁹ However, state participation must be substantial in order to subject the operation of the facility to the restraints of the Fourteenth Amendment;¹⁰ the mere fact that the state has licensed the operation of a business,¹¹ or subjects the business to extensive regulation,¹² will not suffice to establish state action.

Very few functions fall into the category of traditional, exclusive public functions, for which a private actor performing the function is subject to constitutional constraints pursuant to the state-action doctrine, including, for example, running elections and operating a company town,¹³ although a private entity can be engaged in "state action," as required to support cognizable constitutional claims against the entity, if its actions are fairly attributable to the state.¹⁴ However, that a private entity is regulated by the government does not transform the private entity's conduct into state action for Fourteenth Amendment purposes.¹⁵

A court must assess the potential impact of official action in determining whether a state has significantly involved itself with invidious discrimination.¹⁶ It has been said that the test for determining "state action" is whether or not there is significant state

involvement in the private conduct warranting the application of constitutional due process; that action must proximately result in the injury which is the subject of the complaint.¹⁷

State action does not include state inaction.¹⁸ A state's failure to forbid racial discrimination within its boundaries does not constitute state action denying equal protection of the laws to blacks who are discriminated against on racial grounds by private persons.¹⁹ However, a state constitutional provision that the state may not abridge the right of any person to sell, lease, or rent residential property according to his or her absolute discretion is invalid under the Equal Protection Clause of the Fourteenth Amendment as embodying in the state's basic charter a right to discriminate on racial grounds.²⁰

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Footnotes

- 1 [Rendell-Baker v. Kohn](#), 457 U.S. 830, 102 S. Ct. 2764, 73 L. Ed. 2d 418, 4 Ed. Law Rep. 999 (1982); [Alridge v. Rite Aid of Washington, D.C., Inc.](#), 146 F. Supp. 3d 242 (D.D.C. 2015), *aff'd*, 672 Fed. Appx. 3 (D.C. Cir. 2016).
- 2 [Cooper v. Aaron](#), 358 U.S. 1, 78 S. Ct. 1401, 3 L. Ed. 2d 5, 3 L. Ed. 2d 19, 79 Ohio L. Abs. 452, 79 Ohio L. Abs. 462 (1958).
Constitutional standards are applicable only when it can be said that the government is responsible for the specific conduct of which the plaintiff complains. [Peery v. Chicago Housing Authority](#), 791 F.3d 788 (7th Cir. 2015).
To prevail on a 42 U.S.C.A. § 1983 claim, a plaintiff must allege that the defendant acted under color of state law, in other words, that there was state action. [Great Western Mining & Mineral Co. v. Fox Rothschild LLP](#), 615 F.3d 159 (3d Cir. 2010).
- 3 [Evans v. Newton](#), 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373 (1966).
- 4 [Watchtower Bible and Tract Society of New York, Inc. v. Sagardia De Jesus](#), 634 F.3d 3 (1st Cir. 2011) (municipal permits); [Herschel v. Dyra](#), 365 F.2d 17 (7th Cir. 1966) (antihandbill ordinance).
- 5 [Evans v. Newton](#), 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373 (1966).
- 6 [Adickes v. S. H. Kress & Co.](#), 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970).
- 7 [Gilmore v. City of Montgomery, Ala.](#), 417 U.S. 556, 94 S. Ct. 2416, 41 L. Ed. 2d 304 (1974), noting that conduct that is formally private may become so intertwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed on state action. For state action purposes under the Fourteenth Amendment, it makes no difference whether a racially discriminatory act by a private party is compelled by a statutory provision or by a custom having the force of law—in either case it is the state that has commanded the result by its law. [Adickes v. S. H. Kress & Co.](#), 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970).
- 8 [McQueen v. Druker](#), 438 F.2d 781 (1st Cir. 1971).
- 9 [Evans v. Newton](#), 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373 (1966); [Auerbach v. African Am. Teachers Ass'n, Inc.](#), 356 F. Supp. 1046 (E.D. N.Y. 1973); [Statom v. Board of Com'rs of Prince George's County](#), 233 Md. 57, 195 A.2d 41 (1963).
- 10 [Moose Lodge No. 107 v. Irvis](#), 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972).
- 11 [Harrison v. Malchom](#), 664 F. Supp. 1110 (N.D. Ohio 1987).
A state's admitting a foreign corporation and licensing it to do business within the state does not convert the corporation's racial discrimination into state action. [Slack v. Atlantic White Tower System, Inc.](#), 181 F. Supp. 124 (D. Md. 1960), judgment *aff'd*, 284 F.2d 746 (4th Cir. 1960).
- 12 [Scott v. Eversole Mortuary](#), 522 F.2d 1110 (9th Cir. 1975).
- 13 [Manhattan Community Access Corporation v. Halleck](#), 139 S. Ct. 1921, 204 L. Ed. 2d 405 (2019).
- 14 [Santos-Buch v. Financial Industry Regulatory Authority, Inc.](#), 32 F. Supp. 3d 475 (S.D. N.Y. 2014), *aff'd*, 591 Fed. Appx. 32 (2d Cir. 2015).
- 15 [Single Moms, Inc. v. Montana Power Co.](#), 331 F.3d 743 (9th Cir. 2003); [Wasko v. Silverberg](#), 103 Fed. Appx. 332 (10th Cir. 2004).

- 16 *Reitman v. Mulkey*, 387 U.S. 369, 87 S. Ct. 1627, 18 L. Ed. 2d 830 (1967).
- 17 *Gotsis v. Lorain Community Hospital*, 46 Ohio App. 2d 8, 75 Ohio Op. 2d 18, 345 N.E.2d 641 (9th Dist. Lorain County 1974).
- 18 *Mulkey v. Reitman*, 64 Cal. 2d 529, 50 Cal. Rptr. 881, 413 P.2d 825 (1966), judgment *aff'd*, 387 U.S. 369, 87 S. Ct. 1627, 18 L. Ed. 2d 830 (1967).
- 19 *Williams v. Howard Johnson's Inc. of Washington*, 323 F.2d 102 (4th Cir. 1963).
- 20 *Reitman v. Mulkey*, 387 U.S. 369, 87 S. Ct. 1627, 18 L. Ed. 2d 830 (1967).

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II. Federal Constitutional Guarantees of Civil Rights

C. Fourteenth Amendment

§ 11. State action violating civil rights under Fourteenth Amendment—Operation, lease, or sale of state facilities

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[Discrimination in provision of municipal services or facilities as civil rights violation, 51 A.L.R.3d 950](#)

The Fourteenth Amendment forbids discrimination on the ground of race in the operation of state and municipal facilities, whether such facilities are operated in a governmental or in a proprietary capacity.¹ However, a state or subdivision thereof may in good faith lawfully sell and dispose of its surplus property, and its subsequent use by the grantee will not be state action subject to the restraints of the Fourteenth Amendment.² Likewise, where there is no purpose of discrimination, no joinder in the enterprise, or no reservation of control by the state, it may lease for private purposes property not used or needed for state purposes, and the lessee's conduct in operating the leasehold will not constitute state action.³

If, however, the property is sold under a deed creating a reversion in the event of its not being used for a designated public purpose,⁴ or the property which is leased is not merely surplus property which can be diverted to purely private purposes,⁵ the acts of the purchaser or lessee in discriminating against blacks on racial grounds are state acts proscribed by the Fourteenth Amendment. Moreover, state responsibility follows where there is state participation with the grantee or lessee through any arrangement, management, funds, or property.⁶

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Footnotes

- 1 [City of St. Petersburg v. Alsup, 238 F.2d 830 \(5th Cir. 1956\).](#)
- 2 [Derrington v. Plummer, 240 F.2d 922 \(5th Cir. 1956\).](#)
- 3 [Derrington v. Plummer, 240 F.2d 922 \(5th Cir. 1956\).](#)
- 4 [Hampton v. City of Jacksonville, Fla., 304 F.2d 320 \(5th Cir. 1962\).](#)
- 5 [Coke v. City of Atlanta, Ga., 184 F. Supp. 579 \(N.D. Ga. 1960\).](#)
- 6 [McQueen v. Druker, 438 F.2d 781 \(1st Cir. 1971\).](#)

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